directed against the acts of individuals as well as those of states, and since the indicia of slavery have formerly been held to be within its scope, the acts here complained of should be cognizable in Federal courts. The majority opinion nowhere denies that the Amendment in question is directed against action by individuals, but rather by implication admits that fact and, it seems, merely holds that the acts complained of do not result in a condition which comes within the meaning of the words "slavery and involuntary servitude" as used in the Amendment. While the argument that since a wrong such as is here complained of perpetrated by a number of negroes against a white person would not be considered as reducing that white person to a condition of slavery, this wrong perpetrated by white persons against negroes can not be so considered, has considerable force in the light of the court's construction of this amendment, yet, as has been suggested, considering the inciting cause of the Amendment and the fact that race prejudice against the negro is so strong and universal that the court may take judicial notice of it, it would not have been at all surprising had the jurisdiction of the Federal courts been declared. In the *Civil Rights Cases,* 109 U. S. 3, the right to make and enforce contracts is referred to as one of those "fundamental rights which appertain to the essence of citizenship, and the enjoyment or deprivation of which constitutes the essential distinction between freedom and slavery."

COMMON CARRIERS—LIMITATION OF LIABILITY—AGREED VALUATION.—Plaintiff shipped by defendant express company a package containing a manuscript of a history of literature, and received therefor a receipt containing a stipulation that, in the absence of a different valuation placed thereon by the consignor, the agreed valuation of the package should be fifty dollars in case of loss or damage. The package was lost through defendant's negligence, and its value, in the absence of a market value, was placed at fifteen hundred dollars, or the value to plaintiff based upon his time and labor in preparing it. *Held,* that the stipulation as to the agreed valuation was void and the true value could be recovered. *Southern Express Company* v. *Owens* (1906), — Ala. —, 41 So. Rep. 752.

In this case the court divides the liability of a common carrier into two parts: first, a liability caused by its own negligence or omission of duty, the liability of an ordinary bailee; and, second, for losses by mistake or accident, the liability of an insurer. As to the latter a carrier may by special contract limit or qualify its liability. But as to its negligence, public policy forbids that it should be relieved by special agreement from that degree of diligence which the law has exacted in the discharge of its duties. This is a proper statement of the law, but it seems that the court has missed the point in that the agreed valuation is not a limitation of liability for negligence, but a valuation agreed upon by the parties as to the real value of the article shipped, in lieu of another placed thereon by the shipper and which is the basis of the contract for carriage. In *Hart* v. *Railroad,* 112 U. S. 331, the shipper consigned five horses and received a bill of lading in which there was a stipulation that the agreed valuation of a carload of horses was $1,200.00, and it was

held that the valuation was just and reasonable and binding upon the plaintiff. The court said "that where a contract of this kind is fairly made agreeing on valuation of the property carried, with the rate of freight based on the condition that the carrier assume liability only to the exent of the agreed valuation, even in case of loss or damage by the negligence of the carrier, the contract will be upheld as a proper and lawful mode of securing a due proportion between the amount for which the carrier may be responsible and the freight he received, and of protecting himself against extravagant and fanciful valuations." This is the leading case and was followed in *Railroad* v. *Sherrod,* 84 Ala. 178, of which the principal case says that the court overlooked the dual nature of the liability of the carrier. It is also followed in the following cases: *Railway Co.* v. *Harwell,* 91 Ala. 340; *Pacific Express Co.* v. *Foley,* 46 Kans. 457; *Railway Co.* v. *Simon,* 15 Oh. C. C. 123; *Johnstone* v. *R. R. Co.,* 39 S. C. 55; *Railroad Co.* v. *Payne,* 86 Va. 485; *Zouch* v. *Railway Co.,* 36 W. Va. 524; *Loeser* v. *Railway Co.,* 94 Wis. 571; *Graves* v. *Railroad Co.,* 137 Mass. 33; *Hood* v. *Pneumatic Service Co.,* — Mass. —, 77 N. E. 638. In *Moulton* v. *Railway Co.,* 31 Minn. 85, the court says that a carrier cannot, by an arbitrary agreement limiting measure of damages, be discharged from a part of its liability for its own negligence. But in *Alair* v. *Northern Pacific,* 53 Minn. 160, it is said that, if the purpose of the contract was merely to place a limit on the amount for which the defendant should be liable, then, clearly, as to losses resulting from negligence, it is not just or reasonable and not binding. But if it was a stipulation as to value fairly and honestly made as the basis of the carrier's charges, it ought to be upheld. In *Belger* v. *Dinsmore,* 51 N. Y. 166, involving the same sort of a transaction as in the principal case, it was held that by accepting a receipt with a stipulation fixing the valuation at $50.00, the plaintiff assented to that valuation and it was binding. The same conclusion was reached in *Ballou* v. *Earland Prew Express Co.,* 17 R. I. 441; *Earnest* v. *Express Co.,* 1 Woods (U. S. C. C.), 573; *Muser* v. *Express Co.,* 1 Fed. 382; *Smith* v. *Express Co.,* 108 Mich. 572; *Durgin* v. *Express Co.,* 66 N. H. 277. But the principal case is upheld in *Galt* v. *Express Co.,* MacArthur & M. (D. C.), 124, in which such a stipulation was held to limit liability as insurer, but not as to negligence; also in *Conover* v. *Express Co.,* 40 Mo. App. 31, and *Grogan* v. *Express Co.,* 114 Pa. St. 523, repudiating the doctrine of *Hart* v. *Railroad,* supra.

CONSTITUTIONAL LAW—DELEGATION OF LEGISLATIVE POWER—REGULATIONS OF EXECUTIVE DEPARTMENTS.—Defendant was indicted for violation of a regulation adopted by the Secretary of Agriculture concerning grazing privileges in government forest reserves, under an act of Congress for protection of forests giving the Secretary the right to make necessary and proper rules and regulations, and providing a punishment for violation of provisions of the act or of regulations to be established by the Secretary; on demurrer, *held,* that the act was unconstitutional and void as an attempted delegation of legislative power to an administrative officer. *United States* v. *Matthews* (1906), — D. C. E. D. Wash. —, 146 Fed Rep. 306.

The case is of interest as it involves the difficult question of what consti-